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January 20, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JONATHAN E. CANIS

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Via Hand Delivery

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation by the Association for Local Telecommunications Services; e.spire Communications, Inc.; Intermedia Communications Inc.; Metromedia Fiber Network Services, Inc.; and MGC Communications, Inc.

Deployment of Wireline Services Offering Advanced Telecommunications Capabilities: CC Docket No. 98-147

Dear Ms. Salas:

Pursuant to Sections 1.1206(b)(1) and (2) of the Commission's Rules, the Association for Local Telecommunication Services; e.spire Communications, Inc.; Intermedia Communications Inc.; Metromedia Fiber Network Services, Inc.; and MGC Communications, Inc. ("the parties") submit this notice in the above-captioned docketed proceeding of an oral *ex parte* presentation made and written *ex parte* materials distributed on January 19, 1999 during a meeting with Jason Oxman of the Common Carrier Bureau. The presentation was made by Charles Kallenbach of e.spire Communications, Inc., Robert Riordan of Metromedia Fiber Network Services, Inc. and Jonathan Canis and John Heitmann of Kelley Drye & Warren LLP.

During the presentation, the parties discussed the need for Commission action to eliminate ILEC restrictions on cross-connects between collocated CLECs.

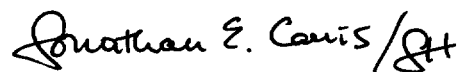
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KELLEY DRYE & WARREN LLP

Pursuant to Sections 1.1206(b)(1) and (2), an original and two copies of this *ex parte* notification (with attachments) are provided for inclusion in the public record of the above-referenced proceeding. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Jonathan E. Canis" followed by a stylized flourish or initials.

Jonathan E. Canis

cc: Jason Oxman

EX PARTE PRESENTATION CC DOCKET NO. 98-147

January 20, 1999

**Association for Local Telecommunications Services
e.spire Communications, Inc.
Intermedia Communications Inc.
Metromedia Fiber Network Services, Inc.
MGC Communications, Inc.**

**FEDERAL COMMUNICATIONS COMMISSION
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1.
**THE COMMISSION SHOULD DEFINE
THE ENHANCE EXTENDED LINK ("EEL")
AS A SINGLE UNBUNDLED NETWORK**

Definition of an Extended Link/EEL UNE would accelerate competitive deployment of traditional voice and advanced services and ease collocation space constraints.

- The Enhanced Extended Link ("EEL") provides an important functionality – composed of loop, aggregation/routing and transport (including the appropriate electronics and cross-connects) extending from the customer premise to the CLEC's point of interface (either a collocation arrangement in another ILEC office, or a separate CLEC point of presence).
- As such, the EEL eliminates the need for CLECs to collocate in every ILEC office in order to reach their customers – this *maximizes the number of customers that can be reached through a single collocation arrangement and thereby decreases CLEC collocation costs and conserves scarce ILEC collocation space.*
- While different commentators in this proceeding proposed different solutions (*i.e.*, ALTS's "Bit-Stream" approach) the record overwhelmingly demonstrates that this type of regulatory relief is essential. The EEL will *expand the reach of CLECs' traditional and broadband service offerings* by allowing CLECs to reach customers served through ILEC end offices where collocation is not yet economically justifiable or physically possible.

ILEC attempts to limit the use of an Extended Link – or any other UNE – to voice or local services must be rejected.

- Currently, some ILECs are making a concerted effort at the State level to restrict the use to which a CLEC may put the EEL or other UNEs – *in particular, seeking a decision that UNEs may not be used for data services.*
- Such attempts to limit the use of the EEL (or any other UNE) for voice service or “predominantly” voice applications have no rational legal or policy basis and run counter to the Commission’s Section 706 mandate.
- ILECs should be required to offer *EELs for all loop and transport types* (for example, an EEL consisting of a 1.544 Mbps loop and 1.544 Mbps or higher transport can be used to provide dedicated transport for voice service, or can be used purely for data transmission as a Frame Relay Access Line).
- Because the functionality defined does not vary on whether the loop component of the EEL UNE employs “home run” copper or a DLC configuration, ILECs should not be permitted to limit access to Extended Links on the basis of that technology-based distinction – or any other.

The Commission has ample authority to define EEL as a UNE.

- Like the Commission's currently defined loop and NID combination, EEL is a common configuration that offers a prescribed functionality for serving end users. As many states have ordered sub-loop unbundling, the loop itself is a common configuration of feeder plant, aggregation equipment, distribution plant – and the NID. The Commission's definition of a loop UNE is not inconsistent with the states' complementary definitions of sub-loop elements as UNEs, or indeed with the Commission's own definition of the NID as a distinct UNE. The 1996 Act contemplates overlapping UNE definitions.
- The Eighth Circuit's *Shared Transport Decision*, 153 F.3d 597 (8th Cir. 1998), found that the Commission has the authority to use a *functional approach to defining UNEs*. The Eighth Circuit expressly upheld the Commission's definition of shared transport as a distinct UNE *even though it comprises two other UNEs – local switching and interoffice transport*. This decision represents the strongest possible support for the definition of the EEL as an independent UNE.
- Because the EEL does not provide an end-to-end service (it must be combined with a CLEC's own switching equipment) an EEL UNE *cannot be challenged on the basis that it blurs the line between cost-based unbundling of network elements and avoided-cost resale of retail services*.

Commission adoption of an EEL UNE would advance the best practices of the states.

- The New York PSC has required Bell Atlantic to provide EEL as a tariffed service in New York.
 - Bell Atlantic agreed to “voluntarily” offer EEL as a precondition to receiving the New York PSC’s approval of its Section 271 application.
- The Texas PUC Staff has recommended that the Texas PUC adopt the EEL as a UNE.
 - This approach is superior to “voluntary” ILEC offerings, because it ensures that an ILEC cannot withdraw the EEL at a later date.
- Pursuant to negotiated interconnection agreements, CLECs had been able to order Extended Links from BellSouth; it is not clear how this functionality will be provisioned after existing agreements expire.
- A federally-defined EEL UNE would provide certainty and uniformity to CLECs on a nationwide basis.

2.

**THE COMMISSION SHOULD FIND THAT
THE RESALE OBLIGATIONS OF §
251(c)(4) APPLY FULLY TO ALL ILEC
SERVICES PROVIDED TO END USERS**

The Commission must ensure that the resale requirements of §§ 251(c)(4) and 252(d)(3) of the Act are fully implemented.

- The Commission already has found that the resale provisions of the Act fully apply to advanced services. (§ 706 Order, ¶¶ 60-61.) Currently, however, the Commission's rules exempt ILEC access charges from the resale requirement (based on a former finding that the vast majority of access customers were carriers, and that services provided to carriers, as opposed to end users, are not subject to resale). The Commission tentatively has concluded that this exemption must be eliminated because end-users are increasingly purchasers of ILEC access services. (NPRM at ¶¶ 188-89.) The record shows overwhelming support for such action. The Commission should:
 - Expressly eliminate the access service exemption from the Act's resale and resale pricing obligations – *clarifying that this applies to both interstate and intrastate access services.*
 - Expressly find that the ILEC resale obligations apply to *all* ILEC end user services, including: *ADSL-based services, Frame Relay and High Capacity Special Access.*

3.
**THE COMMISSION SHOULD
ELIMINATE RESTRICTIONS ON CROSS-
CONNECTS BETWEEN COLLOCATED
CLECs**

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects.

- Recent ILEC Attempts to Place Technical Restrictions or Impose Unnecessary Costs:
 - Prohibit Fiber Cross-Connects
 - Require Unnecessary Cabling that Exhausts Available Conduit
 - Require that ILEC Performs All Work
 - Require Connection to ILEC Pot Bay or Other Equipment
 - Require CLEC Placement of Unnecessary Equipment in Collocation Areas
 - Offer ILEC Service (DS1, DS3, OC3, OC48) Instead of Connecting Cable, Which Forces Collocator to Install Unnecessary Electronics (i.e. optical multiplexers when only cross-connect panel is needed)

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

- Any Limitation on the Capacity of Fiber a CLEC can Bring into its Collocated Space Unreasonably restricts Service & Inflates Costs
 - MFN Is Uniquely Focused On Fiber Cross-Connects -- It Provides Fiber Connectivity with Virtually Unlimited Bandwidth to Carrier and CLEC Customers
 - | Employs Multiple Fiber Backbone Cable (Each Carrying 100 Fiber Pairs or More), with Virtually Unlimited Capacity
 - | ILEC Policies Requiring Cross Connects at Any Predetermined Capacity (DS3, OC3, OC48) Artificially Restricts MFN's Ability to Deliver Higher Capacities and Would Force MFN to Bring Multiple Cables Into the ILEC Office
 - | This Would Impose Unnecessary Costs, and Use Up Scarce Space In the ILEC's Riser Conduit
- Restricting Cross-Connect Capability Would Require Multiple Cables and Pulls into the Same Central Office

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

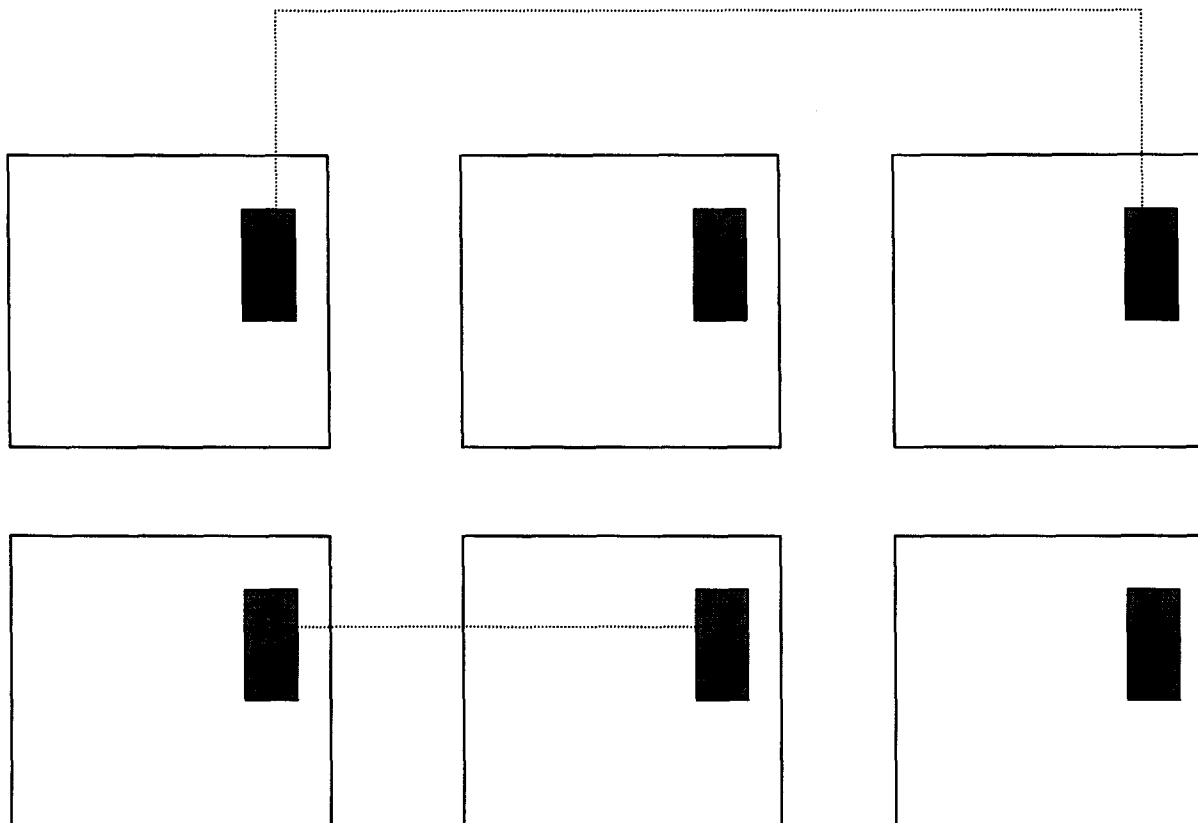
- Currently, Some ILECs Are Refusing Cross-Connections to Virtual Collocation Arrangements
 - Will Allow Cross-Connects Between Physical Arrangements In Same Room
 - Will Not Allow Connections Between Non-Contiguous Physical Arrangements
 - | Can't Cross-Connect to CLECs On Different Floors In Same Office, or Different Collocation Rooms On the Same Floor
 - Will Not Allow Connections Between Physical and Virtual Collocation Arrangements
 - | As Physical Collocation Space Becomes Exhausted, this Restriction Will Increasingly Prevent CLECs From Cross-Connecting

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

- The Commission Must Eliminate Unreasonable Restrictions/Costs:
 - Allow Direct Connections -- No routing via ILEC Pot Bays or NCTE
 - Require "Dark" Copper and "Dark" Fiber Connections -- Not ILEC Services
 - | Eliminate ILEC Requirements to Cross-Connect at Predetermined Capacity (i.e., No Mandatory DS1, DS3, OC3, OC48 Cross-Connects)
 - | Do Not Allow ILECs to Require Installation of Optical Line Terminating Multiplexers or Other Optical/Electrical Conversion Equipment If a Simple Optical Cross-Connect Panel Will Suffice
 - Allow CLECs to do Own Work Where Possible
 - No Dedicated Racks
 - No Multiple Cable Pulls

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

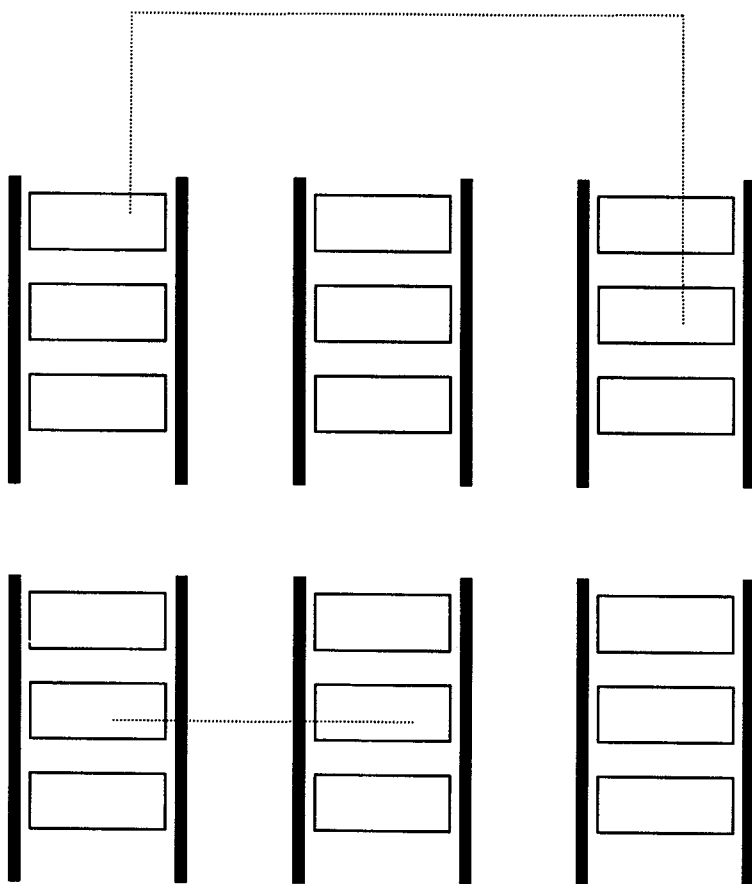
■ **TRADITIONAL COMMON AREA CAGED COLLOCATION**



- CLECs Should Be Able To Perform Own Work In Common Areas
- No Charges For Dedicated Cable Racking
- "Jumper Cable" Cross Connect As Per NEBS
- "Dark Fiber" And Copper Connects

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

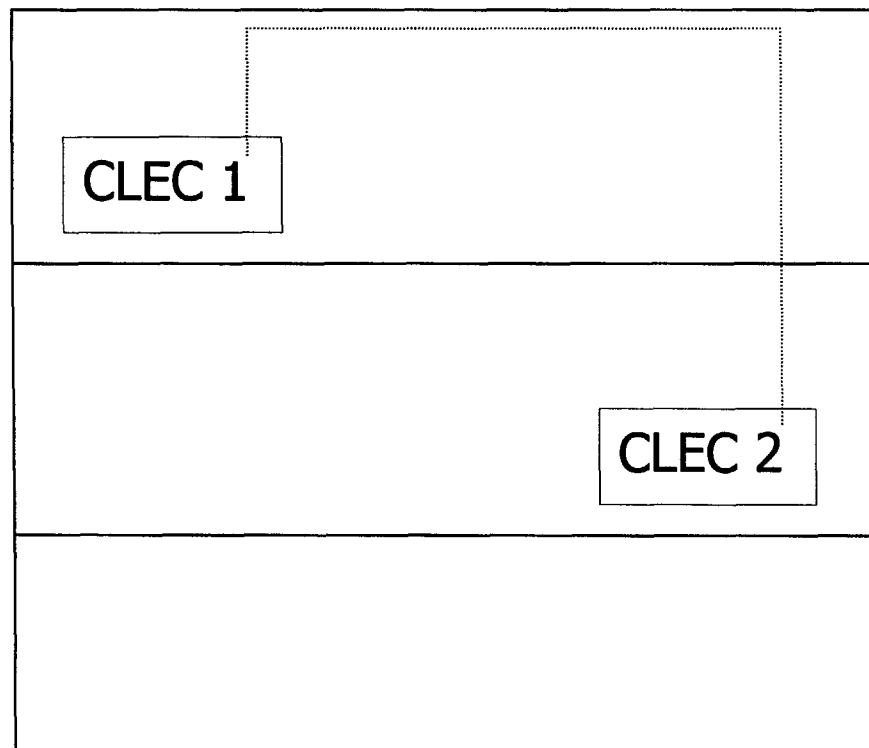
■ COMMON AREA CAGELESS COLLOCATION



- In Common Area, CLECs Should Be Able To Perform Cross-Connection Work Themselves
- Direct Fiber and Copper "Jumper Cable" Per NEBS
- No Racking Required For Contiguous Equipment
- No Dedicated Cable Racking
- "Dark Fiber" And Copper Cross-Connects

The Commission should eliminate restrictions on CLEC-to-CLEC Cross-Connects (cont'd)

■ CROSS-CONNECTING NON-CONTIGUOUS AND NON-COMMON AREA EQUIPMENT



- Work May Be Performed By Approved Contractor
- ILECs May Not Charge For Dedicated Cable Racking
- Arrangements For "Dark Fiber" And Copper Without Electronics
- CLEC May Provide Own Cable, Just As With Entrance Facility

4.
**THE COMMISSION SHOULD
ELIMINATE RESTRICTIONS ON
COLLOCATED EQUIPMENT**

The Commission should eliminate restrictions on collocated equipment

- Ameritech Has Refused To Allow Collocation Of RSMs
 - Even When Offered Proof That Switching Was Disabled, And RSM Was Used Only For Routing, Muxing
 - Arbitration Pending In Illinois
 - Initial Staff Recommendation In Favor Of Prohibition Of RSM
- FCC Must Eliminate Restriction On Switching Equipment